

Commodity Futures Trading Commission

§ 40.3

§ 40.2 Listing products for trading by certification.

To list a new product for trading, to list a product for trading that has become dormant, or to accept for clearing a product (not traded on a designated contract market or a registered derivatives transaction execution facility), a registered entity must file with the Secretary of the Commission at its Washington, D.C., headquarters no later than the close of business of the business day preceding the product's listing or acceptance for clearing, either in electronic or hard-copy form, a copy of the product's rules, including its terms and conditions, or the rules establishing the terms and conditions of products that make them acceptable for clearing, and a certification by the registered entity that the trading product or other instrument, or the clearing of the trading product or other instrument including any rules establishing the terms and conditions of products that make them acceptable for clearing, complies with the Act and rules thereunder.

§ 40.3 Voluntary submission of new products for Commission review and approval.

(a) *Request for approval.* A designated contract market or registered derivatives transaction execution facility may request under section 5c(c)(2) of the Act that the Commission approve new products under the following procedures:

(1) The submitting entity labels the request as "Request for Commission Product Approval";

(2) The request for product approval is for a commodity other than a security future or a security futures product as defined in sections 1a(31) or 1a(32) of the Act, respectively;

(3) The submission complies with the requirements of Appendix A to this part—Guideline No. 1;

(4) The submission includes the fee required under Appendix B to this part.

(b) *Forty-five day review.* All products submitted for Commission approval under this paragraph shall be deemed approved by the Commission forty-five days after receipt by the Commission, or at the conclusion of such extended

period as provided under paragraph (c) of this section, unless notified otherwise within the applicable period, if:

(1) The submission complies with the requirements of paragraph (a) of this section; and

(2) The submitting entity does not amend the terms or conditions of the product or supplement the request for approval, except as requested by the Commission or for correction of typographical errors, renumbering or other such nonsubstantive revisions, during that period. Any voluntary, substantive amendment by the submitting entity will be treated as a new submission under this section.

(c) *Extension of time.* The Commission may extend the forty-five day review period in paragraph (b) of this section for:

(1) An additional forty-five days, if within the initial forty-five day review period, the Commission notifies the submitting entity that the product raises novel or complex issues that require additional time for review or is of major economic significance. This notification shall briefly describe the nature of the specific issues for which additional time for review is required; or

(2) Such period as the submitting entity so instructs the Commission in writing.

(d) *Notice of non-approval.* The Commission at any time during its review under this section may notify the submitting entity that it will not, or is unable to, approve the product or instrument. This notification will briefly specify the nature of the issues raised and the specific provision of the Act or regulations, including the form or content requirements of paragraph (a) of this section, that the product would violate, appears to violate or the violation of which cannot be ascertained from the submission.

(e) *Effect of non-approval.* (1) Notification to a submitting entity under paragraph (d) of this section of the Commission's refusal to approve a product or instrument does not prejudice the entity from subsequently submitting a revised version of the product or instrument for Commission approval or from submitting the product or instrument as initially proposed pursuant to a supplemented submission.